

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 21, 2008

D051527 Judy W. et al. v. Jacob R.

The order is affirmed. McConnell, P.J.; We Concur: Huffman, J., Haller, J.

D051056 In re Valerie W., a Juvenile

The opinion filed April 4, 2008, is ordered certified for publication.

D051563 People v. Cowan

The judgment is affirmed.

D051600 In re Lorissa V., a Juvenile

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D052708 In re Styles on Habeas Corpus

The petition is denied.

D052328 In re Oie on Habeas Corpus

The petition is denied.

D052407 In re Caporrimo on Habeas Corpus

The petition is denied.

D052508 In re Johnson on Habeas Corpus

The petition is denied.

D052777 Bruening v. San Diego Department of Housing and Community Development

The appeal is dismissed as untimely.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 22, 2008

D048759 Von Arx et al. v. Max Equipment Rental et al.

The judgment and orders are affirmed. Each party shall bear its own costs on appeal. Huffman, J.; We Concur: Benke, Acting P.J., Haller, J.

D051925 In re Arian C., a Juvenile

Judgment affirmed. Irion, J.; We Concur: McConnell, P.J., McIntyre, J.

D052330 In re Smith on Habeas corpus

the petition is denied.

D050087 Donaldson v. Donaldson

Robert's motion to augment is denied. The fee award is affirmed. The portion of the restraining order providing it "shall remain in effect for 15 years from November 2, 2006" is reversed, and the matter is remanded for a determination under section 6345(a) of whether the restraining order is to be renewed either for five years or permanently. Jenny shall recover her costs on appeal. Nares, J.; We Concur: McConnell, P.J., O'Rourke, J.

D052187 People v. Spagnolo

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D052561 Johnny C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Johnny C. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D052848 Adrianna P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied as minors have an adequate remedy by way of appeal. The request for consolidation is denied as moot.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 23, 2008

D049580 People v. Nava

The judgment is affirmed. O'Rourke, J.; We Concur: McIntyre, Acting P.J., Aaron, J.

D050766 Guerra v. State of California

Judgment affirmed. The parties to bear their own costs on appeal. Haller, J.;
We Concur: McConnell, P.J., Huffman, J.

D052476 In re Sicairos on Habeas Corpus

The petition is denied.

D052645 Jameson v. Superior Court of San Diego County/Desta

The petition is denied.

D052786 Jameson v. Superior Court of San Diego County/Desta

The petition is denied.

D052526 In re Williams on Habeas Corpus

The petition is denied.

D052577 Jameson v. Superior Court of San Diego County/Desta

The petition is denied.

D050704 In re Francisco M., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D051011 Royal Indemnity Company v. United Enterprises Inc., et al.

The judgment of dismissal is affirmed. Appellants to pay all costs on appeal. CERTIFIED FOR
PUBLICATION. Huffman, J.; We Concur: Benke, Acting P.J., Haller, J.

D050348 People v. Felton

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 23, 2008 (Continued)

D052324 In re Sharp on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Aaron. We take judicial notice of San Diego Superior Court file No. SCD121964.

On March 3, 1997, Anthony Andre Sharp entered a negotiated guilty plea to one count of committing a lewd act on a child under the age of 14 years and admitted he had suffered two prior prison convictions and one prior strike conviction. The court granted the People's motion to dismiss the remaining charges. The court sentenced Sharp to the stipulated 18-year prison term (double the upper term of eight years, plus two years for the prior prison terms).

Sharp states he does not wish to withdraw his guilty plea but asserts the enhancements are illegal under *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856] ("*Cunningham*"). In *Cunningham*, the United States Supreme Court decided California's Determinate Sentencing Law (DSL) violates a defendant's right to a jury trial and proof beyond a reasonable doubt by allowing a judge to conduct fact-finding on aggravating factors used to justify the upper term sentence. Sharp expressly waived his right to a jury trial and agreed to the 18-year prison term in exchange for the dismissal of a second count of lewd conduct on a child under the age of 14 years. Although Sharp complains he is receiving reduced conduct credits as the result of pleading guilty to a violent felony, Sharp acknowledged in the change of plea agreement he would be required to serve 85 percent of the sentence. Sharp received the benefit of his bargain and he has not shown his sentence is illegal.

We do not address Sharp's generalized contentions concerning federal law and prisoners' health care.

The petition is denied.

D050670 People v. Sweet

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D049152 People v. Ziskin

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Huffman, J.

D050430 People v. Munoz

The order is affirmed. Haller, J.; We Concur: McConnell, P.J., McIntyre, J.

D049536 Lepker et al. v. Deitel et al.

The judgment is affirmed. Respondents are awarded costs on appeal. McIntyre, J.; We Concur: Huffman, Acting P.J., Haller, J.

D050637 Pauma Ridge Mutual Water Company et al. v. Birch et al.

The order is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 23, 2008 (Continued)

D049510 Pauma Ridge Mutual Water Company et al. v. Birch et al.

The judgment is affirmed. Water Company is entitled to costs on appeal. McDonald, J.;
We Concur: Benke, Acting P.J., Irion, J.

**D049207 In re Wholesale Electricity Antitrust Cases I
 In re Wholesale Electricity Antitrust Cases II**

We dismiss the portion of the appeal that challenges the trial court's approval of the settlement of the claims of the California class and the judgment entered regarding the Master Complaint in the California Class Actions (JCCP Nos. 4204-00005 and 4204-00006.) We affirm the trial court's approval of the settlement of the claims of the Egger class and the judgment entered regarding the Egger II lawsuit (JCCP No. 4204-00009). Irion, J. We Concur: McConnell, P.J., Huffman, J.

D052570 Harrison v. Bersin et al.

The court has received and considered appellant's letter dated April 15, 2008 and respondents' letter dated April 17, 2008, addressing the timeliness of appellant's notice of appeal. The matter having been considered by Presiding Justice McConnell and Associate Justices O'Rourke and Aaron, the appeal is DISMISSED as untimely. Appellant's argument and evidentiary showing is insufficient to rebut the presumption that respondents served their notice of ruling and attached file-stamped copy of the appealed order on appellant on December 21, 2008, the date stated in the proof of service of the notice of ruling and the date the notice and proof of service were filed.

D052307 National Enterprises Inc., et al. v. City of San Diego

Upon written request filed by appellant City of San Diego, the appeal filed January 11, 2008, is dismissed and the remittitur is ordered to issue immediately.

D052408 In re Elliott on Habeas Corpus

The petition is denied.

D052368 In re Zinnamon on Habeas Corpus

The petition is denied.

D052536 In re Murphy on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 24, 2008

D049791 People v. Tucker

The judgment is affirmed. Nares, Acting P.J.; We Concur: Aaron, J., Irion, J.

D051502 People v. Mejia

The judgment is affirmed. McDonald, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D051849 In re A.R. et al. a Juvenile

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Aaron, J.

D052414 In re Sherlock on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Aaron.

In 1996 a jury convicted petitioner Thomas Sherlock of possession of a controlled substance and possession of a hypodermic syringe. The jury also found that Sherlock had five prior strike convictions, including three stemming from a 1990 plea agreement. The trial court sentenced Sherlock to a prison term of 25 years to life under the three strikes law.

Sherlock appealed the trial court's judgment. Among other issues, he argued that the convictions stemming from his 1990 plea agreement should not be treated as strikes because he was not advised of this possibility when he entered into the plea agreement. He also argued that treating them as strikes violated the terms of the plea agreement. We rejected these arguments and affirmed the trial court's judgment in all respects. (*People v. Sherlock* (Sept. 21, 1998, D028308) [nonpub. opn.])

In this petition, Sherlock is once again challenging the trial court's decision to treat the convictions stemming from his 1990 plea agreement as strikes. As he did on appeal, he argues that the use of the convictions as strikes violates his plea agreement. He also argues that he was never advised that his convictions could be used as strikes when he entered into the plea agreement.

We conclude that the petition is procedurally barred in two respects. First, it is untimely and Sherlock has not justified his substantial delay in seeking relief. (*In re Robbins* (1998) 18 Cal.4th 770, 780.) Second, the issues raised in this petition were raised and rejected on appeal and Sherlock has not established an exception to this procedural bar. (*In re Harris* (1993) 5 Cal.4th 813, 829.)

The petition is denied.

D051885 People v. Tejada

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D052010 In re Cuero on Habeas Corpus

The "Notice of Cuero Filing a Habeas Corpus in the Fourth Appellate District Division One Court, to Exhaust State and Federal Remedies" has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Aaron. The filing requests reconsideration of this court's March 6, 2008, denial of petitioner's petition for writ of habeas corpus. This court's order denying petitioner's habeas petition was final as to this court when it was filed on March 6, 2008. (Cal. Rules of Court, rule 8.264(b)(2)(A).) The court no longer has authority to rehear the matter. (Cal. Rules of Court, rules 8.264(c)(1), 8.268(a).) The request for reconsideration is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 24, 2008 (Continued)

D052489 The Bishop's School v. Superior court of San Diego County/MA Engineers Inc.,et al.

The petition is denied.

D052774 RBF Consulting, Inc. v. Superior Court of the County of Imperial/San Diego Community College District et a.

The petition for writ of mandate, request for stay and responses have been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Irion. The petition is denied. The stay issued April 8, 2008, is vacated.

D052406 In re Staffiero on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 25, 2008

D049912 People v. Flores

The judgment of the trial court is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

D049832 Tighe v. Tighe

With regard to the order filed September 25, 2006 relating to the rulings of the commissioner on May 19, 2006, we affirm that portion of the order in which the commissioner ordered Thomas to reimburse Ann Marie for his share of the medical insurance premiums for the children. We reverse the portions of the order requiring that Thomas reimburse Ann Marie for property taxes and home repair payments. We also reverse that portion of the order awarding Ann Marie attorney fees for work completed concerning matters both within and in excess of the commissioner's jurisdiction, and remand the matter for the trial court to reconsider the issue. On remand, the commissioner may exercise discretion in determining an appropriate attorney fee award for work related to addressing the child support issues. Ann Marie may file with the superior court judge a motion requesting reimbursement for amounts she claims are owed to her pursuant to the judgment of dissolution.

With regard to the commissioner's order filed September 25, 2006 awarding Ann Marie \$1,100 in attorney fees, we reverse and remand the order to the commissioner to hold a new hearing on the matter. The commissioner shall ensure that both parties receive notice of the hearing and an opportunity to be heard. The parties are to bear their own costs on appeal. Aaron, J.; We Concur: O'Rourke, Acting P.J., Irion, J.

D050919 In re Tyler M., a Juvenile

**D051935 In re Tyler M., a Juvenile
(Consolidated)**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D052469 Infantado v. Gilbert

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D052862 People v. Warlick

The opinion issued by the appellate division of the superior court on March 11, 2008, has been read and considered by Justices Benke, McDonald and McIntyre to determine whether this court will transfer the case to its jurisdiction on its own motion. Transfer is declined.

D052367 In re Tunupopo on Habeas Corpus

The petition is denied.

D052527 In re Rosier on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 25, 2008 (continued)

**D052621 Larry B. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency**

The attorney for petitioner Larry B. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.